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14 **UNITED STATES DISTRICT COURT**
15 **CENTRAL DISTRICT OF CALIFORNIA**

17 HALIE BLOOM, an individual; DEVON
18 LINKON, an individual; EMMA L., an
19 individual; K.B. an individual, as legal
parent of JOHN DOE, a minor; STEVEN
20 and MOLLY M., individuals, as legal
parents of SAM M., a minor;
MICHELLE G., an individual, as a legal
parent of ALEX G., a minor; ANDREW
21 L., an individual, as legal parent of
CAROLINE L., a minor; K.J.B., an
22 individual, as legal parent of JANE DOE;
LISA B., an individual, as legal parent of
23 M.B.; and A.C., an individual.

Case No.: 2:18-cv-06749-GW-KS
[District Judge George H. Wu;
Magistrate Judge Karen L. Stevenson]

24 **STIPULATED PROTECTIVE ORDER**
25
26 Plaintiffs,
27 v.
28 ACT, INC., a corporation, and DOES 1-
100,
Defendants.

1 **IT IS HEREBY STIPULATED** by and between the Parties to *Halie Bloom, et al.*
2 v. *ACT, Inc.*, by and through their respective counsel of record, that in order to facilitate
3 the exchange of information and documents which may be subject to confidentiality
4 limitations on disclosure due to federal laws, state laws, and privacy rights, the Parties
5 stipulate as follows:

6 **1. INTRODUCTION**

7 **1.1. Purpose and Limitations**

8 Discovery in this action is likely to involve production of confidential, proprietary,
9 or private information for which special protection from public disclosure and from use
10 for any purpose other than prosecuting this litigation may be warranted. Accordingly, the
11 parties hereby stipulate to and petition the Court to enter the following Stipulated
12 Protective Order. The parties acknowledge that this Order does not confer blanket
13 protections on all disclosures or responses to discovery and that the protection it affords
14 from public disclosure and use extends only to the limited information or items that are
15 entitled to confidential treatment under the applicable legal principles. The parties further
16 acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective Order
17 does not entitle them to file confidential information under seal; Civil Local Rule 79-5
18 sets forth the procedures that must be followed and the standards that will be applied
19 when a party seeks permission from the court to file material under seal.

20 **1.2 Good Cause Statement**

21 This action is likely to involve medical and other confidential information relating
22 to examinees and/or other third parties as well as commercial, financial, technical and/or
23 other proprietary information of ACT for which special protection from public disclosure
24 and from use for any purpose other than prosecution of this action is warranted. Such
25 confidential and proprietary materials and information consist of, among other things,
26 confidential business or examinee information, information regarding confidential
27 business practices or processes, or other confidential research, development, or
28 commercial information (including information implicating privacy rights of third

1 parties), personal identity information, and information otherwise generally unavailable
2 to the public, or which may be privileged or otherwise protected from disclosure under
3 state or federal statutes, court rules, case decisions, or common law. Accordingly, to
4 expedite the flow of information, to facilitate the prompt resolution of disputes over
5 confidentiality of discovery materials, to adequately protect information the parties are
6 entitled to keep confidential, to ensure that the parties are permitted reasonable necessary
7 uses of such material in preparation for and in the conduct of trial, to address their
8 handling at the end of the litigation, and serve the ends of justice, a protective order for
9 such information is justified in this matter. It is the intent of the parties that information
10 will not be designated as confidential for tactical reasons and that nothing be so
11 designated without a good faith belief that it has been maintained in a confidential, non-
12 public manner, and there is good cause why it should not be part of the public record of
13 this case.

14 **2. DEFINITIONS**

15 **2.1 Action:** *Halie Bloom, et al. v. ACT, Inc.*, Central District of California Case
16 No. 2:18-CV-06749-GW-KS. “Action” does not include any arbitration proceeding(s)
17 that might occur pursuant to this Court’s rulings; discovery procedures for any such
18 arbitrations shall be determined by the arbitrator

19 **2.2 Challenging Party:** a Party or Non-Party that challenges the designation of
20 information or items under this Order.

21 **2.3 “CONFIDENTIAL” Information or Items:** information (regardless of
22 how it is generated, stored or maintained) or tangible things that qualify for protection
23 under Federal Rule of Civil Procedure 26(c), and as specified above in the Good Cause
24 Statement.

25 **2.4 Counsel:** Outside Counsel of Record and House Counsel (as well as
26 their support staff).

27 **2.5 Designating Party:** a Party or Non-Party that designates information or
28 items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

1 **2.6 Disclosure or Discovery Material:** all items or information, regardless
2 of the medium or manner in which it is generated, stored, or maintained (including,
3 among other things, testimony, transcripts, and tangible things), that are produced or
4 generated in disclosures or responses to discovery in this matter.

5 **2.7 Expert:** a person with specialized knowledge or experience in a matter
6 pertinent to the litigation who has been retained by a Party or its counsel to serve as an
7 expert witness or as a consultant in this Action.

8 **2.8 House Counsel:** attorneys who are employees of a party to this Action.
9 House Counsel does not include Outside Counsel of Record or any other outside counsel.

10 **2.9 Non-Party:** any natural person, partnership, corporation, association, or
11 other legal entity not named as a Party to this action.

12 **2.10 Outside Counsel of Record:** attorneys who are not employees of a party to
13 this Action but are retained to represent or advise a party to this Action and have
14 appeared in this Action on behalf of that party or are affiliated with a law firm which has
15 appeared on behalf of that party, and includes support staff.

16 **2.11 Party:** any party to this Action, including all of its officers, directors,
17 employees, consultants, retained experts, insurers, and Outside Counsel of Record (and
18 their support staffs).

19 **2.12 Producing Party:** a Party or Non-Party that produces Disclosure or
20 Discovery Material in this Action.

21 **2.13 Professional Vendors:** persons or entities that provide litigation support
22 services (e.g., photocopying, videotaping, translating, preparing exhibits or
23 demonstrations, and organizing, storing, or retrieving data in any form or medium) and
24 their employees and subcontractors.

25 **2.14 Protected Material:** (i) any Disclosure or Discovery Material that is
26 designated as “CONFIDENTIAL” and (ii) any identities, personally identifiable
27 information, or the ACT ID of the Plaintiffs in this action who have elected to proceed
28 using litigation aliases or anonymously.

1 **2.15 Receiving Party:** a Party that receives Disclosure or Discovery Material from
2 a Producing Party.

3 **3. SCOPE**

4 This Order is subject to the Local Rules of this District and the Federal Rules of
5 Civil Procedure on matters of procedure and calculation of time periods.

6 The protections conferred by this Stipulation and Order cover not only Protected
7 Material (as defined above), but also (1) any information copied or extracted from
8 Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected
9 Material; and (3) any testimony, conversations, or presentations by Parties or their
10 Counsel that might reveal Protected Material.

11 Any use of Protected Material at trial (if any) shall be governed by the orders of
12 the trial judge. This Order does not govern the use of Protected Material at trial.

13 **4. DURATION**

14 Even after final disposition of this litigation, the confidentiality obligations
15 imposed by this Order shall remain in effect until a Designating Party agrees otherwise in
16 writing or a court order otherwise directs. Final disposition shall be deemed to be the later
17 of (1) dismissal of all claims and defenses in this Action, with or without prejudice; and
18 (2) final judgment herein after the completion and exhaustion of all appeals, rehearings,
19 remands, trials, or reviews of this Action, including the time limits for filing any motions
20 or applications for extension of time pursuant to applicable law.

21 **5. DESIGNATING PROTECTED MATERIAL**

22 **5.1 Manner and Timing of Designations; Exercise of Restraint:** Except as
23 otherwise provided in this Order (see, e.g., second paragraph of section 5.1(a) below), or
24 as otherwise stipulated or ordered, Disclosure or Discovery Material that qualifies for
25 protection under this Order must be clearly so designated before the material is disclosed
26 or produced.

27 Each Party or Non-Party that designates information or items for protection under
28 this Order must take care to limit any such designation to specific material that qualifies

1 under the appropriate standards. The Designating Party must designate for protection
2 only those parts of material, documents, items or oral or written communications that
3 qualify so that other portions of the material, documents, items or communications for
4 which protection is not warranted are not swept unjustifiably within the ambit of this
5 Order.

6 Mass, indiscriminate or routinized designations are prohibited. Designations that
7 are shown to be clearly unjustified or that have been made for an improper purpose (e.g.,
8 to unnecessarily encumber the case development process or to impose unnecessary
9 expenses and burdens on other parties) may expose the Designating Party to sanctions.

10 If it comes to a Designating Party's attention that information or items that it
11 designated for protection do not qualify for protection, that Designating Party must
12 promptly notify all other Parties that it is withdrawing the inapplicable designation.

13 **(a) Documents.** Designation in conformity with this Order requires, for
14 information in documentary form (e.g., paper or electronic documents, but excluding
15 transcripts of depositions or other pretrial or trial proceedings), that the Producing Party
16 affix at a minimum, the legend "CONFIDENTIAL" (hereinafter "CONFIDENTIAL
17 legend"), to each page that contains protected material. If only a portion or portions of the
18 material on a page qualifies for protection, the Producing Party also must clearly identify
19 the protected portion(s) (e.g., by making appropriate markings in the margins).

20 A Party or Non-Party that makes original documents available for inspection need
21 not designate them for protection until after the inspecting Party has indicated which
22 documents it would like copied and produced. During the inspection and before the
23 designation, all of the material made available for inspection shall be deemed
24 "CONFIDENTIAL." After the inspecting Party has identified the documents it wants
25 copied and produced, the Producing Party must determine which documents, or portions
26 thereof, qualify for protection under this Order. Then, before producing the specified
27 documents, the Producing Party must affix the "CONFIDENTIAL legend" to each page
28 that contains Protected Material under subsection (i) of the definition of Protected

1 Material. If only a portion or portions of the material on a page qualifies for protection,
2 the Producing Party also must clearly identify the protected portion(s) (e.g., by making
3 appropriate markings in the margins).

4 **(b) Depositions.** At a Party's request on the record, all deposition testimony
5 taken in this case shall be treated as Confidential Information until the expiration of the
6 60th day after the transcript is delivered to any party. Within this time period, a party may
7 serve a Notice of Designation to all parties of record as to specific portions of the
8 testimony that are designated Confidential Information, and thereafter only those portions
9 identified in the Notice of Designation shall be protected by the terms of this Order. The
10 failure to serve a timely Notice of Designation shall waive any designation of testimony
11 taken in that deposition as Confidential Information, unless otherwise ordered by the
12 Court.

13 **(c) Other.** For information produced in some form other than documentary
14 and for any other tangible items, that the Producing Party affix in a prominent place on
15 the exterior of the container or containers in which the information is stored the legend
16 "CONFIDENTIAL." If only a portion or portions of the information warrants protection,
17 the Producing Party, to the extent practicable, shall identify the protected portion(s).

18 **5.2 Inadvertent Failures to Designate**

19 **(a) Non-privileged documents.** An inadvertent failure to designate a document
20 as Confidential Information does not waive the right to so designate the document. If a
21 party designates a document as Confidential Information after it was initially produced,
22 the receiving party, on notification of the designation, must make a reasonable effort to
23 assure that the document is treated in accordance with the provisions of this Order. No
24 party shall be found to have violated this Order for failing to maintain the
25 confidentiality of material during a time when that material has not been designated
26 Confidential Information, even where the failure to so designate was inadvertent and
27 where the material is subsequently designated Confidential Information.

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1 **(b) Privileged documents.** If information subject to a claim of attorney-client
2 privilege, work product protection, or any other privilege or immunity, or a party's
3 confidentiality obligations to a third-party, is or has been inadvertently produced in this
4 action, such production shall in no way prejudice or otherwise constitute a waiver of, or
5 estoppel as to, any claim of privilege, work product protection, or other ground for
6 withholding to which any producing party would otherwise be entitled, and shall instead
7 be treated as if there were no disclosure. If any producing party or non-party identifies
8 such production materials, the recipient of the materials agrees that it will not use
9 information until the court rules on any challenge to the confidentiality or privilege
10 designation as set forth in paragraph #6 below.

11 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

12 **6.1 Timing of Challenges.** Any Party or Non-Party may challenge a
13 designation of confidentiality at any time that is consistent with the Court's
14 Scheduling Order(s) (if any and to the extent applicable).

15 **6.2 Meet and Confer.** The Challenging Party shall initiate the dispute resolution
16 process under Local Rule 37-1 et seq. or follow the procedures for
17 informal, telephonic discovery hearings on the Court's website. In conferring, the
18 challenging party must explain the basis for its belief that the confidentiality designation
19 was not proper and must give the designating party an opportunity to review the
20 designated material, to reconsider the designation, and, if no change in designation is
21 offered, to explain the basis for the designation. The designating party must respond to
22 the challenge within five (5) business days. Unless the Designating Party has waived or
23 withdrawn the confidentiality designation, all parties shall continue to afford the material
24 in question the level of protection to which it is entitled under the Producing Party's
25 designation until the Court rules on the challenge.

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7. **ACCESS TO AND USE OF PROTECTED MATERIAL**

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7.1 **Basic Principles.** A Receiving Party may use Protected Material that is disclosed or produced by another Party or by a Non-Party in connection with this Action only for prosecuting, defending, or attempting to settle this Action. Protected Material obtained in this Action may not be used in or in connection with any other legal or administrative proceeding, unless separately obtained in that proceeding pursuant to valid process. Such Protected Material may be disclosed only to the categories of persons and under the conditions described in this Order. When the Action has been terminated, a Receiving Party must comply with the provisions of Section 12 below (FINAL DISPOSITION).

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Protected Material must be stored and maintained by a Receiving Party at a location and in a secure manner that ensures that access is limited to the persons authorized under this Order.

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7.2 **Disclosure of “CONFIDENTIAL” Information or Items.** Unless otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated “CONFIDENTIAL” only to:

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(a) the Receiving Party’s Outside Counsel of Record in this Action, as well as employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this Action;

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(b) the officers, directors, employees (including House Counsel), and insurers of the Receiving Party to whom disclosure is reasonably necessary for this Action;

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(c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably necessary for this Action and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

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(d) the court and its personnel;

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(e) court reporters and their staff;

(f) professional jury or trial consultants, mock jurors, and Professional Vendors to whom disclosure is reasonably necessary for this Action and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(g) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information;

(h) during their depositions, witnesses, and attorneys for witnesses, in the Action to whom disclosure is reasonably necessary provided: (1) the deposing party requests that the witness sign the form attached as Exhibit A hereto; and (2) they will not be permitted to keep any confidential information unless they sign the "Acknowledgment and Agreement to Be Bound" (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material may be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order; and

(i) any mediator or settlement officer, and their supporting personnel, mutually agreed upon by any of the parties engaged in settlement discussions.

(j) Contractors. Those persons specifically engaged for the limited purpose of making copies of documents or organizing or processing documents, including outside vendors hired to process electronically stored documents;

(k) Others by Consent. Other persons only by written consent of the Producing Party or upon order of the Court and on such conditions as may be agreed or ordered.

**8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
OTHER LITIGATION**

If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this Action as "CONFIDENTIAL," that Party must:

(a) promptly notify in writing the Designating Party. Such notification shall include a

copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected.

If the Designating Party timely seeks a protective order, the Party served with the subpoena or court order shall not produce any information designated in this action as “CONFIDENTIAL” before a determination by the court from which the subpoena or order issued, unless the Party has obtained the Designating Party’s permission. The Designating Party shall bear the burden and expense of seeking protection in that court of its confidential material and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this Action to disobey a lawful directive from another court.

**9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE
PRODUCED IN THIS LITIGATION**

(a) The terms of this Order are applicable to information produced by a Non-Party in this Action and designated as “CONFIDENTIAL” by the Non-Party. Such information produced by Non-Parties in connection with this litigation is protected by the remedies and relief provided by this Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking additional protections.

(b) In the event that a Party is required, by a valid discovery request, to produce a Non-Party’s confidential information in its possession, and the Party is subject to an agreement with the Non-Party not to produce the Non-Party’s confidential information, then, unless the Non-Party has agreed to allow disclosures required by subpoena or other legal processes, the Party shall:

(1) promptly notify in writing the Requesting Party and the Non-

1 Party that some or all of the information requested is subject to a confidentiality
2 agreement with a Non-Party,;

3 (2) promptly provide the Non-Party with a copy of the Stipulated
4 Protective Order in this Action, the relevant discovery request(s), and a reasonably
5 specific description of the information requested; and

6 (3) make the information requested available for inspection by the
7 Non-Party, if requested.

8 (c) If the Non-Party fails to seek a protective order from this court within 14
9 days of receiving the notice and accompanying information, the Receiving Party may
10 produce the Non-Party's confidential information responsive to the discovery request. If
11 the Non-Party timely seeks a protective order, the Receiving Party shall not produce any
12 information in its possession or control that is subject to the confidentiality agreement
13 with the Non-Party before a determination by the court. Absent a court order to the
14 contrary, the Non-Party shall bear the burden and expense of seeking protection in this
15 Court of its Protected Material.

16 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

17 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
18 Protected Material to any person or in any circumstance not authorized under this
19 Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing
20 the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve
21 all unauthorized copies of the Protected Material, (c) inform the person or persons to
22 whom unauthorized disclosures were made of all the terms of this Order, and (d) request
23 such person or persons to immediately return or destroy the Protective Material and
24 execute the "Acknowledgment and Agreement to Be Bound" that is attached hereto as
25 Exhibit A.

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1 **11. MISCELLANEOUS**

2 11.1 Right to Further Relief. Nothing in this Order abridges the right of any person
3 to seek its modification by the Court in the future.

4 11.2 Right to Assert Other Objections. By stipulating to the entry of this Protective
5 Order, no Party waives any right it otherwise would have to object to disclosing or
6 producing any information or item on any ground not addressed in this Stipulated
7 Protective Order. Similarly, no Party waives any right to object on any ground to the use
8 in evidence of any of the material covered by this Protective Order. The existence of this
9 Protective Order does not obligate a Party to produce any records as to which it has a
10 legitimate basis for objecting to production.

11 11.3 Filing Protected Material. A Party that seeks to file under seal any Protected
12 Material must comply with Civil Local Rule 79-5. Protected Material may only be filed
13 under seal pursuant to a court order authorizing the sealing of the specific Protected
14 Material at issue. If a Party's request to file Protected Material under seal is denied by the
15 court, then the Receiving Party may file the information in the public record unless
16 otherwise instructed by the court.

17 **12. FINAL DISPOSITION**

18 After the final disposition of this Action, as defined in paragraph 4, within 60 days
19 of a written request by the Designating Party, each Receiving Party must return all
20 Protected Material to the Producing Party or destroy such material. As used in this
21 subdivision, "all Protected Material" includes all copies, abstracts, compilations,
22 summaries, and any other format reproducing or capturing any of the Protected Material.
23 Whether the Protected Material is returned or destroyed, the Receiving Party must submit
24 a written certification to the Producing Party (and, if not the same person or entity, to the
25 Designating Party) by the 60-day deadline that (1) identifies (by category, where
26 appropriate) all the Protected Material that was returned or destroyed and (2) affirms that
27 the Receiving Party has not retained any copies, abstracts, compilations, summaries or
28 any other format reproducing or capturing any of the Protected Material. Notwithstanding

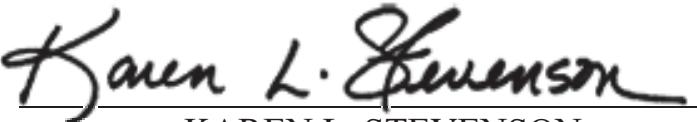
1 this provision, Counsel are entitled to retain an archival copy of all pleadings, motion
2 papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence,
3 deposition and trial exhibits, expert reports, attorney work product, and consultant and
4 expert work product, even if such materials contain Protected Material. Any such archival
5 copies that contain or constitute Protected Material remain subject to this Protective
6 Order as set forth in Section 4 (DURATION).

7 **13. VIOLATIONS**

8 Any violation of this Order may be punished by any and all appropriate measures
9 including, without limitation, contempt proceedings and/or monetary sanctions.

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11 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.
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15 DATED: March 22, 2019
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KAREN L. STEVENSON
UNITED STATES MAGISTRATE JUDGE

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